

46 Am. Jur. 2d Judges § 159

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Judges

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IX. Disqualification to Act in Particular Case

B. Grounds for Disqualification

5. Prior Participation in, Connection with, or Knowledge of the Case or Parties as Grounds for Disqualification

c. Prior Participation in or Connection with Case as Attorney as Grounds for Disqualification

§ 159. Judge's former role as defense counsel as grounds for disqualification

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, [Judges](#)  47(1), 47(2)

Prior representation or activity as attorney or counsel for the defense generally disqualifies a judge from sitting or acting in a criminal case.¹ Representation of a codefendant likewise disqualifies a judge.² However, a judge's prior representation of a defendant in an unrelated criminal matter does not require disqualification of the judge in the absence of either a showing of actual prejudice or facts in the record revealing some other impropriety.³ The fact that a trial judge represented a defendant in a previous criminal case while the case was on appeal has been found not to furnish a per se valid ground for a recusal of the judge from a subsequent criminal prosecution of the same defendant.⁴ A prior conviction for a felony offense used to enhance a defendant's punishment in a subsequent conviction is not void although the judge who presided at that earlier trial had represented the defendant in various other criminal actions.⁵

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Footnotes

- ¹ [Roberts v. State](#), 161 So. 2d 877 (Fla. 2d DCA 1964); [Cantu v. State](#), 802 S.W.2d 349 (Tex. App. San Antonio 1990), petition for discretionary review refused, (May 1, 1991).
- ² [Parrish v. State](#), 127 Tex. Crim. 138, 75 S.W.2d 262 (1934).
- ³ [Hammond v. State](#), 594 N.E.2d 509 (Ind. Ct. App. 1992); [Kilgore v. Maass](#), 89 Or. App. 489, 749 P.2d 1201 (1988); [Nevarez v. State](#), 832 S.W.2d 82 (Tex. App. Waco 1992), petition for discretionary review refused, (Nov. 25, 1992).
As to bias or prejudice as a disqualifying factor, generally, see §§ [123](#) to [144](#).

4 [James v. State, 423 So. 2d 339 \(Ala. Crim. App. 1982\).](#)

5 [Ex parte Stubblefield, 412 S.W.2d 63 \(Tex. Crim. App. 1966\).](#)

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